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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,171	09/13/2000	Christopher D. Barr	66688	7502

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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 08/01/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/661,171

Applicant(s)

BARR ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 15, 2003 has been entered.
2. The rejection of claims 19-30 under 35 U.S.C. 112, second paragraph, is withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Brizzi et al. (US 5277304), Barnard (US 4081126), Ringler (US 2874524), Williamson (US 3073501), Munson (US 422032), Wasserman (US 3009621), Kryzanowski (US 3367552), Bonville (US 2396150), Frost (US 5181649), and Taylor (US 2011383).

5. Regarding claims 19,20, 22,23, Latif teaches automated forming and filling of a container, or carton, for shipping, display and consumer use (Abstract, Figures). The container is formed from an open-ended partially pre-glued and partially assembled carton (i.e. in a first phase, Column 4, line 43 to Column 5, line 2). Latif teaches the top side flaps (A1 and A2 in Figures) , the top, and top front are folded (B2 and B1 in Figures) to close the top, but the bottom is left open for filling the products (Column 5, lines 3-20, Figure 2b). The carton is filled by inserting a plurality of wrapped elongated products (e.g. cigarette packs which each comprise an elongated product and a sealed wrap) through the bottom of the carton by applying force, such that the opposed sealed ends of the elongated wrapped products are all perpendicular to top of the carton in a front-to-back configuration (Column 5, lines 23-36, Column 7, lines 13-15). After filling the products, Latif teaches folding the bottom flaps (C1 and C2), folding the bottom front/back inward and fastening with glue (B4/B3 can alternatively be front/back in Column 6, lines 10-22).
6. Latif is silent in teaching two particular steps of forming the container: (1) simultaneously inserting the wrapped products utilizing a mandrel such that each product has one end adjacent to the top of the container so that the seal is readily accessible from the top of the container as recited in claim 19, and (2) attaching the top of the container to the front panel as recited in claim 19, by a releasable attachment as recited in claim 20. Latif is also silent in teaching the wrapped elongated products comprise (1) a food product and (2) a tray that includes notches on two opposing sidewall, which extends $\frac{1}{4}$ to $\frac{3}{4}$ of the wall as recited in claim 23, that are adjacent to a

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line of weakness that extends from one notch to the other and across the bottom of the tray, and a curved recess in the upper edge of the wall to facilitate handling as recited in claim 19 formed by die cutting the wall as recited in claim 22.

7. With respect to *simultaneously* inserting a plurality of wrapped products with a *mandrel* such that the products' end seal is readily accessible from the top of the carton, Brizzi et al. are relied on as evidence of the conventionality of arranging the same type of wrapped elongated products like Latif (i.e. packs of cigarettes) in the same manner (i.e. a front-to-back position) in a container, but in a way such that the seam of each pack is readily accessible through the top (Abstract, Figures 1 and 2). Barnard teaches wrapped elongated products similar to Latif and Brizzi et al. (i.e. cigarette packs) should be arranged with the end seal adjacent to the top of the container or carton because all of the wrapped elongated products are visible and accessible (Column 3, lines 9-23). Ringler teaches an automatic method of filling a container with the same elongated products as taught by Latif to achieve the orientation taught by Brizzi et al. and Barnard. Ringler teaches *simultaneously* inserting the products using a mandrel (Column 3, line 70 to Column 4, line 29). Therefore, it would have been obvious to have the seal available when the container is opened since it would permit the products to be visible and accessible and one would have been substituting one method of loading wrapped elongated products into a container for another. It would have been further obvious to use a mandrel to simultaneously insert the products to achieve this orientation in the container since one would have been substituting one method of filling the bottom of a container with wrapped elongated products for another.

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8. With respect to having a top front flap glued to the front panel, Williamson, like Latif, teaches a container with a reclosable flip top that is initially sealed with glue and then unsealed to use for dispensing. Williamson is relied on as evidence of the conventionality of having a top front flap glued, which comprises a releasable attachment as recited in claim 20, to the front panel for a container with a reclosable flip top (In Figures 4 and 2 see glue spots 41 and 42). Therefore, it would have been obvious to provide a top front flap glued to the front since one would have been substituting one top design for another for the same purpose: providing a top that is sealed after packaging and is unsealed to provide a reclosable flip top.
9. With respect to the recited tray structure, Munson is relied on as evidence of the conventionality of wrapped elongated products like Latif (i.e. cigarettes) comprising product comprising a tray and an overwrap (a tubular cover) wherein the tray has slot with a V-shaped notch on each sidewall extending a substantial portion (i.e. the entire portion) of the sidewall and corresponding to a line of weakness on the bottom wall such that the tray and overwrap are used in concert to dispense the elongated products (Figures 1-4, Page 1, lines 8-80). Wasserman is relied on as evidence of alternatively providing notches extending $\frac{1}{4}$ to $\frac{3}{4}$ of the walls of a tray holding elongated products, as recited in claim 23, that are adjacent to a line of weakness that extends from one notch to the other and across the bottom of the tray to enable dispensing (See Figure 4 item 16 in light of Figure 1, Column 1, line 63 to Column 2, line 30). Therefore, it would have been obvious to modify Latif and include a tray for the wrapped elongated products which included notches on the walls, extending $\frac{1}{4}$ to $\frac{3}{4}$ of

the walls, as recited in claim 23, that are adjacent to a line of weakness that extends from one notch to the other and across the bottom of the tray since this one would assist in dispensing the products from their wrapped condition and one would have been substituting one wrapped product design for another.

10. With respect to including a food product as the elongated product, Krzynowski is relied on as evidence of the conventionality of tubular dispensing packaging being interchangeable for either cigarettes, as taught by Latif, or elongated food products, such as bread sticks or candy (Column 1, lines 10-70, Column 3, lines 18-28). Bonville is relied on as further evidence of the conventionality of using the same packaging for either cigarettes or food products (Column 1, lines 1-10). Frost is relied on as evidence of the conventionality of a packaging food products in an wrapped elongated tray, wherein cuts formed in two sidewalls is provided to facilitate folding of the tray for dispensing of the products so the consumer does not have to touch the food during consumption (Column 4, lines 13-21, Column 4, lines 31-47, Column 6, lines 28-36, Figures 2,3,9-12). Therefore, it would have been obvious to include elongated food products in the container of Latif since one would have been substituting one conventional packaged good in a wrapped elongated tray for another.

11. With respect to having a curved recess in a wall of the tray, Taylor is relied on as evidence of the conventionality of providing a curved recess on a wall of an elongated food tray to provide curved finger support cut out, or die cut as recited in claim 22, and prevent the consumer from touching the food (item 21 of Figure 1, Page 1, lines 23-36). Therefore it would have been obvious to further modify the elongated wrapped products

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to include a tray with a curved recess on a wall formed by a die cut because it provides finger support and prevents a consumer from contacting the contents of the tray.

12. Regarding claim 21, Latif teaches once assembled the top pivots around a score line 12 (see Figures, (Column 6, lines 23-39), which is a line of weakness.

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Latif (US 5161733) in view of Brizzi et al. (US 5277304), Barnard (US 4081126), Ringler (US 2874524), Williamson (US 3073501), Munson (US 422032), Wasserman (US 3009621), Kryzanowski (US 3367552), Bonville (US 2396150), Frost (US 5181649), and Taylor (US 2011383) as applied to claim 23 above, further in view Pierce Jr. (US3400877).

14. Latif modified is silent in teaching the tray is formed by locking the corners together without requiring adhesive or manual assembly. Pierce is relied on as evidence of the conventionality of automatically assembling trays by locking corners without the use of glue (Column 1, line 10 to column 2, line 23, Figures 1-8). Thus, once it was known to make a tray using any conventional method of forming a tray, such as a glueless automated method, would have been an obvious matter choice.

15. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Brizzi et al. (US 5277304), Barnard (US 4081126), Ringler (US 2874524), Williamson (US 3073501), Munson (US 422032), Wasserman (US 3009621), Kryzanowski (US 3367552), Bonville (US 2396150), Frost

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(US 5181649), and Taylor (US 2011383), further in view Pierce Jr. (US3400877), as applied to claim 24 above, further in view of Kingham et al. (US 4721622).

16. Regarding claims 25 and 26, although Latif modified teaches elongated bread products, Latif modified is silent in teaching a cream cheese component disposed within a baked bread product. Kingham et al. is relied on as evidence of packaging a cream cheese component disposed within a baked bread product within a sealed wrapper and further packaged within an outer carton (Column 7, line 44 to Column 8, line 8, Example 1). Therefore it would have been obvious to include a cream cheese component disposed within a baked bread product since one would have been substituting one wrapped elongated food product for another packaged within an outer carton.

17. Claims 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Brizzi et al. (US 5277304), Barnard (US 4081126), Ringler (US 2874524), Williamson (US 3073501), Munson (US 422032), Wasserman (US 3009621), Kryzanowski (US 3367552), Bonville (US 2396150), Frost (US 5181649), Taylor (US 2011383), Pierce Jr. (US3400877), and Kingham et al. (US 4721622) as applied to claims 25 and 26 above, further in view of Phillips Jr. (US 4738359)

18. Latif teaches any number of wrapped elongated products packaged in the carton. Kingham et al. teach wrapped elongated food product should be sized to fit into a person's hand (Column lines 5-30). Although Latif is silent in teaching any particular tray size, as recited in claim 27, any particular thickness as recited in claims 28 and 29,

or a particular carton size recited in claim 30, the particular wrapped elongated product (e.g. cigarette pack) taught by Latif has a notoriously well known dimension.

19. Philips is relied on as evidence of the conventional cigarette pack, carton, and paperboard dimensions. Philips teaches it is well known in the art that cigarette packs are 70-100 mm long (i.e. 2.76 in to 3.9 in) and standard cartons are 266-286 mm wide, 70-100 mm high and 40-50 mm deep, comprising 2 rows of 5 packs. Based on these carton dimensions and pack arrangement, it is apparent that the conventional pack width and depth is about 53.2-57.2 mm (2.1-2.25 in) and 20-25 mm (0.8-1.0 in), respectively. Phillips also teaches it is conventional to use paperboard with a thickness of 0.25-0.30 mm (0.01 to 0.012 inches) (Column 4, lines 13-44).

20. Therefore, it would have been obvious to include a tray size that has a length of 3.5-5.5 in, a width of 1-3 in and a depth of tray of 0.5-1.5 in as recited in claim 27, since Latif is configured for a conventional wrapped elongated products and these are conventional dimensions for a wrapped elongated product pack. Furthermore, to select any size that can be held in one's hand would have been obvious since Kingham et al. teach wrapped elongated food products should be sized to fit into a person's hand. To select any particular carton dimension, as recited in claim 30, would have been an obvious result effective variable of the number of wrapped products packaged in the carton, since Latif teaches any number can be inserted and the general dimensions of each pack is known. It would have been further obvious to select a paperboard thickness of 0.01-0.025 in for a thickness for both the carton and tray as recited in claim 28 since 0.010 to 0.012 in paperboard was a conventional carton material thickness. To

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select any thickness higher than 0.012 in would have been an obvious result effective variable of the weight of each product as well as the number of trays per carton since 0.012 in is sufficient for cartons holding 10 cigarette packs which would weigh significantly less than 10 cheese filled bakery products that fit in one's hand.

Response to Arguments


21. Applicant's arguments with respect to the new claims have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-0061.


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Robert Madsen 
Examiner
Art Unit 1761
July 25, 2003